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Supreme Court of the United States

OCTOBER TERM, 1905

No. 156

Office Supreme Court U. S.
FILED
FEB 26 1906
JAMES H. McKENNEY,
Clerk

ROCHESTER RAILWAY COMPANY,

Plaintiff in Error.

vs.

THE CITY OF ROCHESTER,

Defendant in Error.

In Error to the Supreme Court of the State of New York.

AFFIDAVIT AND NOTICE OF MOTION TO ADVANCE CAUSE.

W. W. WEBB,
Corporation Counsel.
Attorney for Defendant in Error.
Rochester, N. Y.

Supreme Court of the United States.

October Term, 1905.

No. 501.

ROCHESTER RAILWAY COMPANY,

Plaintiff in Error,

against

THE CITY OF ROCHESTER,

Defendant in Error.

SIR :

Take notice, that a motion will be made at a Term of the Supreme Court of the United States to be held at the Capitol, in the City of Washington, D. C., on the 26th day of February, 1906, at the opening of Court on that day, or as soon thereafter as counsel can be heard, for an order advancing the above entitled cause and setting it down for argument for a particular day, upon the grounds that special and peculiar circumstances exist in this case, which require its advancement; and that the revenues of the principal cities and villages of the State of New York will be affected by the decision in this case; and questions of great public importance are involved herein; and that the

validity of a general statute of the State of New York applying to all the cities and villages of said state requiring street railway corporations to pave between their tracks, the rails of their tracks, and two feet outside thereof, is questioned herein; and that the principal cities and villages of the State of New York, and the citizens and taxpayers thereof, and the street railway corporations operating therein, and their stockholders and bondholders, are interested in the result of this cause, and that the public interests demand a speedy hearing and determination of the same.

Dated, February 19, 1906.

Yours, Etc.,

W. W. WEBB, Corporation Counsel,

Attorney for Defendant in Error,

46 City Hall, Rochester, N. Y.

To CHARLES J. BISSELL, ESQ.,

Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

October Term, 1905.

No. 501.

ROCHESTER RAILWAY COMPANY,

Plaintiff in Error,

against

THE CITY OF ROCHESTER,

Defendant in Error.

STATE OF NEW YORK, }
COUNTY OF MONROE, } ss.
City of Rochester, }

William W. Webb, being duly sworn deposes and says: That he is Corporation Counsel of the City of Rochester, and attorney for the above named defendant in error.

That this cause comes before this Court pursuant to a Writ of Error issued by the Supreme Court of the United States on the 16th day of November, 1905, directed to the Supreme Court of the State of New York.

That this action was commenced in the Supreme Court of the State of New York, on the 15th day December, 1902, to recover $18,274.02, expenses incurred by the defendant in error in paving between the tracks, the rails of the tracks, and two feet outside thereof, of the plaintiff in error. That this action was tried in

the Supreme Court which dismissed the complaint herein, and the judgment entered thereon was affirmed by the Appellate Division of the Supreme Court, and an appeal was taken therefrom to the Court of Appeals of the State of New York, that being the highest state court of said state, which Court reversed the judgments below and directed that judgment be entered in favor of the defendant in error, and against the plaintiff in error, for the full amount demanded in the complaint, with interest and costs. That pursuant to said order and judgment of the Court of Appeals, judgment of the Supreme Court of the State of New York was entered herein on the 6th day of November, 1905, in favor of the defendant in error, and against the plaintiff in error, for the sum of $23,704.55. That thereafter the plaintiff in error sued out a Writ of Error in this Court, which was allowed and issued by this Court on the 16th day of November, 1905, and that pursuant thereto a citation was served on the defendant in error on the 17th day of November, 1905.

That this action was commenced pursuant to § 90 of Chapter 565 of the Laws of 1890 of the State of New York, as amended by Chapter 933 of the Laws of 1895, and § 98 of Chapter 565 of the Laws of 1890 of the State of New York, as amended by Chapter 676 of the Laws of 1892. That said Chapter 565 of the Laws of 1890 is entitled, "An act in Relation to Railroads," and is a general law of the State of New York governing railroads. That § 98 thereof provides that: "Every street surface railroad corporation, so long as it shall continue to use any of its tracks in any street, avenue or public place in any city or village, shall have and keep in permanent repair a portion of such street, avenue or public place, between its tracks, the rails of its tracks, and two feet in width outside of its tracks;"

and further provides that in case of the neglect of a corporation to do so, the local authorities may make such permanent improvement at the expense of the railroad corporation. That the plaintiff in error failed and neglected to make permanent repairs between its tracks, the rails of its tracks, and two feet outside thereof, on Park avenue and North St. Paul street, in the City of Rochester, after notice so to do, and that the same were thereafter made by the defendant in error; and this action was brought to recover the expenses incurred by the defendant in error in making such permanent improvements.

That Chapter 252 of the Laws of 1884 of the State of New York, which went into effect on the 6th day of May, 1884, entitled, "An Act to Provide for the Construction, Extension, Maintenance and Operation of Street Surface Railroads and Branches thereof in Cities, Towns and Villages," contained a provision requiring every corporation incorporated under it, or constructing, extending or operating a railroad under it, to keep in permanent repair the portion of every street and avenue in cities and villages, between its tracks, the rails of its tracks, and two feet in width outside thereof.

That the plaintiff in error claims in this action that the act under which this action was commenced is unconstitutional so far as it relates to all franchises acquired by it previous to the 6th day of May, 1884, the date on which said Chapter 252 of the Laws of 1884 took effect. That the franchises on the streets in question in this action were acquired previous to said 6th day of May, 1884.

That the plaintiff in error claims that the act under which this action was commenced violates the provision

of the Fourteenth Amendment of the Constitution of the United States, providing that a person shall not be deprived of property without due process of law, and contravenes § 10 of Article 1, of the Constitution of the United States forbidding the impairment of the obligations of a contract.

That the plaintiff in error claims that pursuant to an act of the Legislature passed in the year 1869, it had a contract with the State of New York, and with the defendant in error, which exempted it from paying any portion of the cost of an improvement of a street in which its tracks are laid, in case it acquired the franchise therefor prior to the 6th day of May, 1884; and that deponent is of the opinion that if this cause should be decided in favor of the plaintiff in error, the street railway corporations in the principal cities and villages of the State of New York will, by reason of some similar statute, or some ordinance or contract of similar effect, also be exempted from the provisions of said statute; and deponent is therefore of the opinion that the principal cities and villages of the State of New York are interested in the result of this cause.

That the Court of Appeals of the State of New York decided in this action that the provisions of Chapter 565 of the Laws of 1890, entitled, "An Act in Relation to Railroads," requiring street railroad corporations to keep in permanent repair certain portions of the streets on which they operate, was an exercise of the powers of taxation of the State of New York. That the provisions of said act requiring railroad corporations to pave certain portions of the street apply to all cities and villages of the State of New York, and that the result of this action will affect the principal cities and villages of said State of New York, and that the

public interests require that this action be speedily heard and determined, in order that public improvements in the cities and villages of the State of New York may not be hindered or delayed, and in order that the revenues and finances of the cities and villages of said State may not be disarranged. That it is of the greatest importance to the cities and villages of the State of New York, to the local governments thereof, and to the citizens and taxpayers thereof, that an early determination be reached in this case. And deponent is of the opinion that special and peculiar circumstances, as set forth above, exist in this case, which should result in its advancement, and deponent therefore asks that this case be advanced and be set down for argument before this Court on a particular day to be determined by this Court.

W. W. WEBB.

Sworn to before me this 19th day of February, 1906.

CHESTER F. KIEHEL,
Notary Public.